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DISPATCHED BY

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),

Table of Allotments,

FM Broadcast Stations.

(Angel Fire, Chama and Taos, New Mexico)

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MM Docket No. 99-116

RM-9536

**NOTICE OF PROPOSED RULE MAKING****AND****ORDER TO SHOW CAUSE****Adopted: March 31, 1999****Released: April 9, 1999**

Comment Date: June 1, 1999

Reply Comment Date: June 16, 1999

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Alpine Broadcasting Limited Partnership ("petitioner" or "Alpine") requesting the substitution of Channel 256C for Channel 260C at Taos, New Mexico, and the modification of its construction permit for Station KHYF to specify the alternate Class C channel. To accommodate the channel change at Taos, petitioner also requests the substitution of Channel 260C2 for Channel 256C2 at Angel Fire, New Mexico, the modification of Station KKIT's license to specify the alternate Class C2 channel, the substitution of Channel 221A for Channel 255A at Chama, New Mexico, and the modification of the construction permit issued to Tony Gonzales (BPH-961115MM) to specify the alternate Class A channel.

2. Petitioner acquired the construction permit for unbuilt Station KHYF at Taos on February 11, 1999, but states that the transmitter site specified in the construction permit is not usable because it has no electrical power.<sup>1</sup> However, it states that it could use an existing transmitter site on San Antonio Mountain, and operate with Class C facilities, if it swaps its channel for that specified in Angel Fire Station KKIT's license. Petitioner states that the substitute channels at both Angel Fire and Chama can be allotted in compliance with the minimum distance separation requirements at the transmitter sites specified in their respective license and construction permit. Further, Alpine states that it will reimburse the permittee of the

<sup>1</sup> Alpine states that in order to prevent the expiration of its construction permit, it filed an application (BMPH-990218ID) on February 18, 1999, to modify its construction permit to specify an existing transmitter site which in turn required that it propose to downgrade to Channel 260C3.

Chama station for the reasonable and prudent expenses associated with the frequency change.<sup>2</sup> As to Station KKIT, petitioner states that on October 26, 1998, the Commission authorized the assignment of Angel Fire Station KKIT's license from Moreno Valley Broadcasting ("MVB") to Scott D. Parker, Alpine's sole general partner (BALH-980909EA), and on December 21, 1998, granted a pro forma application assigning the KKIT purchase rights from Parker to Alpine (BALH-981202HA). The Station KKIT assignment of license was consummated on March 26, 1999. Therefore, since the petitioner is also the licensee of Station KKIT, no Order to Show Cause is required in order to change its channel.

3. We believe petitioner's proposal warrants consideration since the substitution of Channel 256C for Channel 260C at Taos could enable Station KHYF to begin operation at an earlier date. Channel 256C can be allotted to Taos in compliance with the Commission's minimum distance separation requirements with a site restriction of 60.3 kilometers (37.4 miles) northwest to accommodate petitioner's desired transmitter site. Channel 260C2 can be allotted to Angel Fire in compliance with the Commission's minimum distance separation requirements and used at the transmitter site specified in Station KKIT's license. Channel 221A can be allotted to Chama in compliance with the Commission's minimum distance separation requirements and used at the transmitter site specified in its outstanding construction permit (BPH-961115MM).<sup>3</sup>

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Angel Fire, New Mexico	256C2	260C2
Chama, New Mexico	255A	221A
Taos, New Mexico	260C2, 270C1	256C, 270C1

5. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Tony Gonzales (or KNXX, Inc. if the assignment of construction permit is consummated prior to the comment period herein) SHALL SHOW CAUSE why its construction permit for a new station at Chama, New Mexico, SHOULD NOT BE MODIFIED to specify operation on Channel 221A as proposed herein instead of the present Channel 255A.

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<sup>2</sup> On December 2, 1998, an application was filed to assign the Chama construction permit from Tony Gonzales to KNXX, Inc. This application was granted on March 8, 1999, but has not yet been consummated.

<sup>3</sup> The coordinates for Channel 256C2 at Taos are 36-47-33 North Latitude and 106-02-49 West Longitude. The coordinates for Channel 260C2 at Angel Fire are 36-22-33; 105-14-12. The coordinates for Channel 221A at Chama are 36-54-11; 106-34-35.

6. Pursuant to Section 1.87 of the Commission's Rules, Tony Gonzales/KNXX may, not later than June 1, 1999, file a written statement showing with particularity why its construction permit should not be modified as proposed in the Order to Show Cause. The Commission may call on Tony Gonzales/KNXX to furnish additional information. If Tony Gonzales/KNXX raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Tony Gonzales/KNXX will be deemed to have consented to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above-mentioned channel modifications are ultimately found to be in the public interest.

7. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this Notice of Proposed Rule Making and Orders to Show Cause to the permittee and assignee of the new station at Chama, as follows: Tony Gonzales, 1128 Main Highway 17, P.O. Box 455, Chama, NM 87520; KNXX, Inc, 1217 Valencia, N.E., Albuquerque, NM 87110.

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before June 1, 1999, and reply comments on or before June 16, 1999, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Richard A. Helmick  
Cohn and Marks  
1920 N Street, NW  
Washington, DC 20036  
(Counsel to petitioner)

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from

the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.